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No. 80-1442
IN THE

Supreme Court of the United States

October Term, 1980

CLYDE ROMILLY, *et al.*,

Petitioners,

vs.

AMOCO TRINIDAD OIL COMPANY and SANTA FE DRILLING COMPANY,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF OF RESPONDENTS AMOCO TRINIDAD OIL COMPANY AND SANTA FE DRILLING COMPANY, IN OPPOSITION.

SHELDON A. GEBB,
BILL E. SCHROEDER,
3435 Wilshire Boulevard,
Los Angeles, Calif. 90010,
(213) 381-3411,
Attorneys for Respondents Amoco Trinidad Oil Company and Santa Fe Drilling Company.

Of Counsel:
MICHAEL L. SHANNON,
McCUTCHEN, BLACK, VERLEGER & SHEA,
3435 Wilshire Boulevard, Los Angeles, Calif. 90010,
WINSTON EDWARD RICE,
PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS,
Hibernia Bank Building,
New Orleans, La. 70112.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

Questions Presented.

For the reasons explained above, the questions stated in the Petition are inaccurate and misleading. The only question actually presented by the Petition is whether the trial court correctly applied the applicable law to the admitted facts of this case in determining, under the express guidelines established by *Lauritzen v. Larsen*, 345 U.S. 571 (1953) ("*Lauritzen*"), and *Hellenic Lines v. Rhoditis*, 398 U.S. 306 (1970) ("*Rhoditis*"), the law of Trinidad governs the claims of its citizens performing services on a special purpose United States owned and documented vessel which operated exclusively for six years in the local territorial waters of Trinidad under a license granted by the government of that sovereign nation.

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BRIEF OF RESPONDENTS AMOCO TRINIDAD OIL COMPANY AND SANTA FE DRILLING COMPANY, IN OPPOSITION.

Respondents Amoco Trinidad Oil Company and Santa Fe Drilling Company, respectfully request that this Court deny the Petition for Writ of Certiorari ("Petition") seeking review of the Ninth Circuit Court of Appeals' opinion in this case. That opinion is reported at 632 F.2d 82.

Defects and Deficiencies of Petition.

Preliminarily, it should be noted that the Petition fails to conform to the requirements of the Rules of this Court in the following important respects:

1. The Petition does not, and indeed could not, set forth "special and important reasons" as specified in Rule 17 for a review of the decision of the Court of Appeals by this Court. The decision rendered by the Court of Appeals is not in conflict with a decision of this Court or of another Court

of Appeals. The Court of Appeals, carefully adhering to the legal principles enunciated by this Court, decided the *facts* relevant to this litigation required the application of foreign law. Moreover, there is nothing new, special or important (except to the parties), about any of the issues. They involve, in the main, rather ordinary issues which were decided by the District Court in the usual course of judicial proceedings. The full record was reviewed in the Court of Appeals and the decision of the District Court to apply the law of the Republic of Trinidad and Tobago ("Trinidad") was affirmed in a *de novo* review by the routine application of well-established principles of this Court.

2. The Petition fails to present accurately or clearly the facts essential to a ready and adequate understanding of the points submitted for consideration as required by paragraph 5 of Rule 21. The petitioners' Statement of the Case argues the merits of their claims rather than presenting the stipulated facts which are relevant to the District Court's holding on the choice of law issue, affirmed by the Court of Appeals, which is the sole issue before this Court. The Petitioners' assertions concerning the cause of the accident are presented as issues in the pretrial conference order and each assertion will be addressed at the time of trial with evidence to the contrary.*

3. It is apparent that the Petition fails to conform to the requirements of subparagraphs (a) and (g) of paragraph 1

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*We note here, so this Court is not misled, that the "Coast Guard report" mentioned in the Petition (Pet. 5-8), was not part of the record on appeal. Furthermore, we believe the Court should be aware that Santa Fe presented a written statement to the Coast Guard pointing out numerous errors in the facts set forth in the Coast Guard's initial report. The Coast Guard took no further action in the matter and no penalties were ever assessed against Santa Fe or Amoco Trinidad. Santa Fe's submission to the Coast Guard was identified as a trial exhibit in the Pretrial Conference Record. (Clerk's Transcript p. 610 "CT").

of Rule 21 with respect to the statement of the questions presented for review and the statement of the case.

The foregoing defects and deficiencies of the Petition should constitute, without more, a sufficient reason for denial of the requested Writ of Certiorari.

Statement of the Case.

The Petitioners' statement of the case is replete with disputed facts and embellishments and omits most of the admitted facts relevant to the choice of law issue before the lower courts and now this Court. Accordingly, Amoco Trinidad and Santa Fe are obliged to submit a further statement of the admitted facts pertinent to the Petition.

(1) The Parties.

The Petitioners are all citizens and residents of Trinidad. The personal injury plaintiffs and the decedents ("Trinidad Workers") were working on the drilling rig Mariner I at the time of the accident. Eleven of the Trinidad Workers were employed by Santa Fe. Their employment was pursuant to

a collective bargaining agreement between Santa Fe and the local Trinidad Oilfield Workers Trade Union. (CT 590). The Trinidad Workers employed by Santa Fe were all in the drilling crew. They worked as headman (liaison for drill crew), floorman, derrickman, cook's helper and warehouseman in seven-day periods with the alternate seven-day periods being spent ashore on their native island where each maintained a private residence at his own expense. (CT 585-590, 679, 868).

The remaining three Trinidad Workers were hired by, and were the employees of, Schlumberger Trinidad, Inc. ("Schlumberger Trinidad"), a Panamanian corporation, pursuant to individual written agreements for work on land and offshore Trinidad. The three Trinidad Workers employed by Schlumberger Trinidad did not live aboard the drilling rig Mariner I, but rather worked as outside specialists aboard the rig on an irregular basis to provide specialized Schlumberger Trinidad logging services relating exclusively to the drilling operations. (CT 568, 587-589, 871, 874).

Prior to the filing of these actions, none of the Trinidad Workers had ever had any personal contact with the United States. All of the Trinidad Workers' wages were paid in Trinidad and in the local currency of Trinidad. (CT 585-590). The Trinidad Workers were subject to Trinidadian income tax, and the taxes were withheld by their employers and paid over to the government of Trinidad. The Trinidad Workers were required to and did file annual income tax returns with the government of Trinidad for the years the drilling rig Mariner I was working offshore Trinidad before and after the accident. (CT 867-868).

Respondent Amoco Trinidad is a Delaware corporation, whose principal offices and places of business are located within the territorial confines of Trinidad. (CT 868-869).

The Trinidad Workers contend Amoco Trinidad was an owner *pro hac vice* of the drilling rig Mariner I. (CT 115, 680). Amoco Trinidad has never been based in or operated from any place other than Trinidad. The principal office and place of business of Amoco Trinidad is located in Port of Spain, Trinidad, and the operational base of Amoco Trinidad is located at Galeota Point, Trinidad. The president and chief executive officer of Amoco Trinidad resides in Port of Spain, Trinidad. The president is directly in charge of the activities of Amoco Trinidad and is responsible for making the day-to-day decisions of that company. The business records of Amoco Trinidad are primarily prepared, stored and maintained in Trinidad. Amoco Trinidad operates in Trinidad solely pursuant to the terms and conditions of certain licenses and concessions granted it by the government of that nation. Amoco Trinidad has no employees, other than certain officers, residing outside the area defined by the Continental Shelf of Trinidad. (CT 869). Amoco Trinidad voluntarily appeared in this action and jurisdiction over Amoco Trinidad was obtained by consent. (CT 114).

Respondent Santa Fe is a California corporation that was owner *pro hac vice* and operator of the drilling rig Mariner I. (CT 674). The day-to-day decisions concerning the operation of the drilling rig Mariner I and the work of the Sante Fe employees aboard the drilling rig Mariner I were made by Sante Fe's supervisory personnel in Trinidad. It had 103 persons working in Trinidad at the time of the accident. Eleven of these persons were clerical/accounting/administrative personnel. The remaining 92 persons were involved in the operations of the drilling rig Mariner I offshore. Eighty-two of the employees were Trinidadian citizens and residents, 21 were citizens of the United States and Canada. (CT 867).

(2) Base of Operations of the Drilling Rig Mariner I.

The drilling rig Mariner I, although technically documented under the laws of the United States, had no operational contacts with the United States between the time it left the shipyard after construction in 1968 and the time the accident occurred in 1973. From February 1970 to March 1976, the drilling rig Mariner I worked exclusively offshore Trinidad pursuant to a contract with Amoco Trinidad. (CT 870). During this entire period the drilling rig Mariner I was licensed to operate in the waters offshore Trinidad by the government of Trinidad pursuant to the terms of the oil exploration concessions granted to Amoco Trinidad by that foreign government. (CT 869).

During this six-year period almost all of its time (in excess of 90%) was spent in drilling operations while immovably fixed on a drilling location. Something less than ten percent of its time was taken up with non-drilling operations such as tows to new drill sites and setting and recovering anchors. Many of the moves were of short distances (500 yards or less) while the limits of a potential field were probed and established. (CT 870).

The government of Trinidad effectively controlled the balance between expatriate (non-Trinidadians) and local employees working offshore on the drilling rig Mariner I by virtue of its ability to control the number of work permits issued to expatriates allowing them to work offshore. The practice of that government has been to increase the percentage of local workers by eliminating positions eligible to be filled by expatriate workers. (CT 868).

Schlumberger Trinidad, the employer of three of the Trinidad Workers, provides wire line logging services as a contractor to oil companies operating on shore and offshore Trinidad. In this case, the client was Amoco Trinidad. (CT

873-874). The Schlumberger Trinidad personnel worked under the direction and supervision of a specially-trained Schlumberger Trinidad engineer with the results of their tests being provided to Amoco Trinidad who purchased the wire line logging services. (CT 873-874).

Schlumberger Trinidad is not a party to this litigation. Actions were brought against Schlumberger Trinidad in the United States District Court, Southern District of New York for claims arising out of the accident involving their three Trinidad Workers. Schlumberger Trinidad's motions to dismiss these actions were granted. (CT 419-431).

Following the accident, compensation benefits were paid by Santa Fe and by Schlumberger Trinidad to the Registrar of the High Court of Trinidad. These funds were in turn distributed to or on behalf of the survivors of Trinidad Workers Phillips and Straker. (CT 586-587). Thereafter, actions were filed by personal representatives of the heirs of Trinidad Worker Phillips, employed by Santa Fe, and Trinidad Worker Straker, employed by Schlumberger Trinidad, against Santa Fe in the High Court of Trinidad for their alleged wrongful deaths arising out of the accident. (CT 434-435). These two death claims were later settled by the parties and the settlements approved by the High Court of Trinidad.

(3) Location of the Accident.

At the time of the accident the drilling rig Mariner I was positioned some 10.5 miles offshore, north of Galeota Point, Trinidad. (CT 675-676). The government of Trinidad extends that country's territorial jurisdiction twelve nautical miles offshore. In addition, by statute, the civil law of Trinidad applies to any acts or omissions occurring in the

course of the exploration or exploitation of its continental shelf, even beyond the twelve-mile boundary of its territorial sea. (CT 840, 846).

ARGUMENT.

I.

The Decision That the Factors Set Forth in *Lauritzen* Require the Application of Foreign Law to a Maritime Tort Involving Trinidad Workers on Board a Special Purpose Vessel Operating for an Extended Period in the Territorial Waters of Trinidad Raises No Special or Important Question and Is Correct.

It is apparent from the opinion of the Court of Appeals that it correctly applied the ordinary and well-settled rules established by this Court in *Lauritzen* and *Rhoditis* in affirming the decision of the District Court to apply the law of Trinidad to this litigation. Petitioners' assertion the criteria of *Lauritzen* are inapplicable to an American flag vessel (Pet. 8) is without citation and contrary to case authority. *House v. Santa Fe International Corporation*, 1978 A.M.C. 1899 (S.D. Tex. 1978); *Lemonis v. Prudential Grace Line, Inc.*, 81 Misc.2d 614, 366 N.Y.S.2d 541 (1975), 1975 A.M.C. 768. In *House*, the court ruled against the application of United States law in a case involving the death of an alleged seaman working aboard the United States flag drilling rig Bluewater III while operating off the coast of Scotland. In *Lemonis*, the court refused to apply United States law to a claim by a Greek longshoreman allegedly injured while performing localized longshoring operations aboard a United States flag vessel temporarily present in a Greek port.

Following the guidelines of *Lauritzen* and *Rhoditis*, the Court of Appeals, as did the court in *House, supra*, and *Lemonis, supra*, gave minor weight to the United States documented status of the drilling rig Mariner I "because of the facts of this case." (632 F.2d at 86-87). The relative importance of a vessel's flag, when operating on the high

seas and when operating in the local waters of a foreign nation, is explained in *Cunard S.S. Co. v. Mellon*, 262 U.S. 100 (1922), as follows:

> "The defendants contend that the Amendment also covers domestic merchant ships outside the waters of the United States, whether on the high seas or in foreign waters. But it does not say so, and what it does say shows, as we have indicated, that it is confined to the physical territory of the United States. In support of their contention the defendants refer to the statement sometimes made that a merchant ship is a part of the territory of the country whose flag she flies. But this, as has been aptly observed, is a figure of speech, a metaphor. [Citations omitted.] The jurisdiction which it is intended to describe arises out of the nationality of the ship, as established by her domicile, registry and use of the flag, and partakes more of the characteristics of personal than of territorial sovereignty. [Citations omitted.] It is chiefly applicable to ships on the high seas, where there is no territorial sovereign; and as respects ships in foreign territorial waters it has little application beyond what is affirmatively or tacitly permitted by the local sovereign." 262 U.S. at 123.

In *Lauritzen* the Supreme Court, in discussing the importance of the law of the flag, in the context of that case, noted the concept expressed in *Cunard, supra*, that "some authorities reject, as a rather mischievous fiction, the doctrine that a ship is constructively a floating part of the flag-state, but apply the law of the flag on the pragmatic basis that there must be some law on shipboard, that it cannot change at every change of waters, and no experience shows a better rule than that of the state that owns her." 345 U.S. at 485.

That pragmatic requirement that the law of the flag must govern ships which roam the world to prevent the havoc of

a change of law at every change of waters and to supply a law when there is no territorial law applicable, is relevant to the international commerce trade involved in *Lauritzen* and the other cases involving merchant vessels plying the seas which have followed *Lauritzen's* emphasis on the importance of the vessel's flag. The law of the flag, however, is of limited importance to offshore drilling rigs, such as the Mariner I, which operate for extended periods in the jurisdictional waters of a foreign government. The aim of all offshore oil drilling is exploitation of mineral resources claimed by at least one national government. The consistently present factor in the case of offshore oil drilling rigs like the Mariner I, equivalent to the law of the flag on merchant ships, is the law of the nation claiming the oil being drilled for. In this case, that nation is Trinidad.

There is nothing in the record or in our laws that required the drilling rig Mariner I to have a United States flag to operate in the waters of Trinidad. *See* Title 46, Code of Federal Regulations Section 67.01-13. The record is clear, however, it was only able to operate in those waters with the license granted by that foreign government. (CT 869, 900). We respectfully submit the Court of Appeals correctly interpreted the guidelines expressed in *Lauritzen* in determining the United States documented status of the drilling rig Mariner I did not require the application of United States law to the claims involving these Trinidad Workers.

II.

The Decision That Foreign Law Applies to Foreign Workers on Board a Special Purpose Drilling Rig Operating for Over Six Years in the Territorial Waters of Trinidad Raises No Special or Important Question and Is Correct.

The Petitioners' assertion the Court of Appeals "has promulgated by judicial legislation a significant amendment to the Jones Act." (Pet. 12) is specious. The authorities

cited in the Petition in support of this assertion concern the application of the Jones Act based on the position held by an individual on a vessel. Whether an industrial worker meets the test of a Jones Act seaman does not concern choice of law. It only has relevance if the District Court had determined United States law governed Petitioners' claims. The District Court instead, after evaluating and weighing the relevant points of contact between the operations of the drilling rig Mariner I and the countries of Trinidad and the United States (the only two counties where competing laws are here involved), determined the law of Trinidad, not American law, governs the claims of Petitioners. The Court of Appeals, in affirming the decision of the District Court, likewise carefully adhered to the governing factors set forth in *Lauritzen* and *Rhoditis*.

Petitioners' reference to a bill submitted to a Congressional Committee as "indicative that without that amendment the Jones Act would be clearly applicable to foreign seamen on American flag and American-owned semi-submersible drilling rigs even in waters claimed by other foreign sovereigns" (Pet. 13), is as far-fetched as their reference to authorities determining who is a Jones Act seaman. Petitioners engage in pure speculation in deciding what the final outcome of the bill they cite may be in Congress. In any event, whatever action a Committee may take is totally irrelevant to this litigation since the District Court and the Court of Appeals determined the *facts* of this case required the application of foreign law. There is nothing in the Jones Act which suggests a different result. As this Court has noted and Petitioners concede, the Jones Act does not apply to all foreigners. "By usage as old as the Nation, such statutes have been construed to apply only to areas and transactions in which American law would be considered operative under prevalent doctrines of international law."

(*Lauritzen* at 577; Pet. 10). It is precisely these doctrines of international law which the District Court and the Court of Appeals adhered to in determining foreign law applies. Clearly their decisions are not in conflict with the Jones Act, any decision of this Court or any decision of a Court of Appeals.

III.

The Decision Does Not Conflict With Treaties of the United States, the Case Law of This Court or Any Circuit Court of Appeals Decision.

Petitioners, ignoring the facts which required the application of foreign law under *Lauritzen* and *Rhoditis*, attempt to mislead this Court into believing the Court of Appeals decision is in conflict with treaties of the United States, the decisions of this Court and other Court of Appeals. Their assertion simply is not true. Petitioners fail to recognize the legal principles established by this Court must be applied to the facts of the case before the Court. Their arbitrary assignment of importance to a particular factor to suit their argument totally ignores its relative importance in a given case. They have thus followed the mechanical approach which *Rhoditis* specifically cautioned against.

Petitioners' total disregard for the importance of evaluating the facts of a case is highlighted by their erroneous assertion the unreported cases of *Boubeta v. Santa Fe Overseas, Inc.*, and *Diaz v. Santa Fe Overseas, Inc.* (N.D. Cal. 1977), have been "overruled by the opinion of the Ninth Circuit in the instant case." (Pet. 17) Nowhere in the decision of the Court of Appeals is there any hint or suggestion of a conflict with those decisions for the simple reason none exists.

These two cases and the other unreported opinion, *Rego v. Santa Fe International Corporation*, cited by the Peti-

tioners (Pet. 17), are not relevant here. The courts' language in those cases cannot be considered in the abstract. It is obvious from a review of the opinions the facts of each case concerned a lack of local connections to one particular foreign country found controlling by the District Court's choice of law ruling with respect to the claims involving the Trinidad Workers. In the *Boubeta* and *Diaz* cases, the workers were Spanish Nationals employed by a Delaware corporation on board a United States flag construction vessel, who were injured while the vessel was in the territorial waters of Scotland, the court noting, "the only Scottish contact is the place of the accident." (CT 1049-1051). In *Rego*, the contacts relevant to choice of law were even more widespread among several jurisdictions. There, a Spanish National was hired by a Panama corporation (a subsidiary of a United States corporation) in its Rotterdam office to work on a United States flag construction vessel operating in the North Sea. (Pet. Appendix 25a). These unreported decisions concern connecting factors materially different from the local Trinidadian connecting factors which the District Court determined require Trinidad law to govern the claims involving the Trinidad Workers.

Petitioners allude to the proposition the Court of Appeals' decision somehow conflicts with the "treaties of the United States" without specific reference to any treaty. (Pet. 23). The Shipowner's Liability Convention quoted in their petition (p. 23), was accepted by the United States subject to the understanding its application was limited to "navigation on the high seas only" (Article 20). This Convention has never been adopted by the British Commonwealth, or the government of Trinidad in whose territorial waters the Mariner I had been operating for some six years. *See* 6B Benedict on Admiralty, 1310 (7th ed. 1977), G. Gilmore & C. Black, *The Law of Admiralty*, 323 (2nd ed. 1975).

Petitioners' endeavor to place the Court of Appeals' decision in conflict with the decisions of this Court and the Court of Appeals, Second Circuit (Pet. 24) suffers from one fatal flaw. The reported decisions Petitioners cite all involve merchant ships involved in international commerce which require the application of one law because of the numerous jurisdictions through which the vessel is continuously voyaging. Thus, the departure from the standard approach in international law to apply the law of the place where the acts giving rise to the liability occurred is required, as explained by this Court in *Lauritzen*:

> "because of the varieties of legal authority over waters she may navigate. These range from ports, harbors, roadsteads, straits, rivers and canals which form part of the domain of various states, through bays and gulfs, and that band of the littoral sea known as territorial waters, over which control in a large, but not unlimited, degree is conceded the adjacent state. It includes, of course, the high seas as to which the law was probably settled and old when Grotius wrote that it cannot be anyone's property and cannot be monopolized by virtue of discovery, occupation, papal grant, prescription or custom. . . . The locality test, for what it is worth, affords no support for the application of American law in *this case*. . . ." (Emphasis added.) 345 U.S. at 583-584.

This Court's rationale for giving limited weight to the place of the alleged wrongful act in that case involving international commerce has no application to the localized operations of the drilling rig Mariner I. It is the general rule, the law of the place where the acts occurred, rather than the exception noted in *Lauritzen* applicable to vessels engaged in international commerce, which applies to the claims involving the Trinidad Workers. The District Court properly emphasized this important distinction:

> "The problem is not simplified by the fact that, although the drilling rig is a documented vessel, it is fundamentally different from ships that travel the high seas since it is basically stationary and its drilling function occurred only with the license of the country off whose shores it was drilling." (Pet. Appendix 22a)

The importance of the localized foreign operations of a vessel in determining the choice of law, while not discussed in the Petition, has been considered and acknowledged with some frequency in recent time by the courts. *DeMateos v. Texaco, Inc.*, 562 F.2d 895 (3d Cir. 1977), *cert. denied*, 435 U.S. 904 (1978); *Chirinos de Alvarez v. Creole Petroleum Corp.*, 613 F.2d 1240 (3d Cir. 1980); *House v. Santa Fe International Corporation*, 1978 A.M.C. 1899 (S.D. Tex. 1978). In *Alvarez*, the plaintiffs asserted claims under the Jones Act and the United States general maritime law against Creole Petroleum Corporation, a Delaware corporation, and Exxon Corporation, a New York corporation, for the deaths of four Venezuelans who died in an explosion on board a vessel operating continuously in the territorial waters of Venezuela. The District Court, in applying the general rule for selecting the place of the wrongful act, stated:

> "The *Lauritzen* case recognizes that the most commonly accepted basis in international law for selecting tort rules of decision is by reference to the place where the liability arose. This reflects the strong interest of a nation in the activity which goes on within its sovereign territory. The court noted, however, the impracticality of such a rule when applied 'to an enterprise conducted under many territorial rules and under none,' and observed that the 'more constant law of the flag' is ordinarily applied to vessels which ply international waters from port to port. But such pragmatic considerations do not make the interest of a sovereign in

> activities occurring within its borders any less. Where, as here, the enterprise giving rise to the liability is conducted solely within one jurisdiction, that interest should be given substantial weight, I believe, in making a choice of law decision." *Alvarez v. Creole*, 462 F.Supp. 782, 787 (D. Del. 1978).

The need to respect the laws of other foreign governments in maritime tort claims of a localized nature was set forth descriptively in the recent decision of *DeMateos v. Texaco, Inc.*, 562 F.2d 895 (3d Cir. 1977), *cert denied*, 435 U.S. 904 (1978).

> "It would be an extreme suggestion, we think, that American law could govern relations between Texpan and the employees in its Panamanian gasoline stations because its stock was owned by a multinational business enterprise incorporated in Delaware. It is no less extreme to suggest that American law should govern the relations between Texpan and its employees on vessels it uses in the transportation of petroleum between Central American countries. Either suggestion is a variety of social jingoism, which presumes that the 'liberal purposes' of American law must be exported to wherever our multinational corporations are permitted to do business. Some of our laws, to other nations, may not appear as liberal as the Jones Act appears to us, and extreme applications of such an effort might well result in those nations closing their door to such corporations, to their and our competitive disadvantage." 562 F.2d at 902.

These comments of the Third Circuit Court of Appeals are particularly apropos of the Mariner I cases since the courts of Trinidad do provide a judicial remedy for maritime personal injuries, *Govia v. M/V Journalist*, 1971 A.M.C. 1268 (E.D. Va. 1971), *cf. The SS Transoceanic Peace*, 20 West Indian Reports 495 (High Court of Trinidad and

Tobago 1972) (High Court of Trinidad exercises same admiralty jurisdiction as the English High Court of Admiralty) The courts of Trinidad have a particular interest in personal injury actions because damages are controlled by the court in order that there be the highest practicable uniformity of awards in such actions. *DeSouza v. Trinidad Transport Enterprises, Ltd.*, 18 West Indian Reports 138 (High Court of Trinidad and Tobago 1971).

Finally, Petitioners, in their zeal to raise a special or important question, without citation of case authority, argue the application of the law of Trinidad to their claims will create an unequal treatment between the citizens of Trinidad and the Americans who worked on the drilling rig Mariner I. (Pet. 22, 24). The cases which consider the choice of law applicable to a maritime personal injury claim deal with a particular claim before the court not the comparative status of all personnel on board. Under the *Lauritzen* test, there is an obvious distinction between the Trinidad Workers whose employment was required by the Trinidad government and the American workers who enjoyed the benefits and burdens of United States citizenship.

The allegiance of the Trinidad Workers is a factor that points to the law of Trinidad whereas in cases involving a United States citizen as a plaintiff, allegiance of the American plaintiff is a factor which would point toward the law of the United States. Thus, in *Farmer v. Standard Dredging Corp.*, 167 F.Supp. 381 (D. Del. 1958), cited by Petitioners (Pet. 23), the court, after weighing all of the relevant factors, decided to apply the law of the United States to an injury to an American employed on a United States registered dredge in the local waters of Venezuela. The opinion leaves no doubt that had the plaintiff been a citizen or domiciliary of Venezuela, it would have applied Venezuelan law, observing that Venezuelan law was "presumably adequate for

Venezuelan residents." 167 F.Supp. at 384. In any event, the status of the Americans on board the drilling rig Mariner I is irrelevant here for none of them filed suit for personal injuries.

The Petitioners' assertion of unequal treatment also ignores the fact that persons are treated differently under the laws when working offshore. Thus, a wire line operator, like those Trinidad Workers employed by Schlumberger Trinidad, working on a drilling barge, is not a seaman for Jones Act purposes because he is not permanently assigned to the vessel. *Cox v. Otis Engineering Corp.*, 474 F.2d 613 (5th Cir. 1973). So also an offshore worker injured on a platform some ninety miles off the Coast of Louisiana has no rights under admiralty law. *Bertrand v. Shell Oil Company*, 489 F.2d 293 (5th Cir. 1973). Likewise, in *Owens v. Diamond M Drilling Co.*, 487 F.2d 74 (5th Cir. 1973), a motorman on a platform who ate, slept and performed miscellaneous services on a tender vessel assigned to the platform was held not to be entitled to seaman status as were those permanently assigned to the tender. But probably the most graphic example of distinctions made under maritime tort law among workers employed offshore is *Higginbotham v. Mobil Oil Corp.*, 545 F.2d 422 (5th Cir. 1977), *rev'd. on other grounds*, 436 U.S. 618 (1978).

In *Higginbotham*, three passengers, Higginbotham, Shinn and Nation, died in a helicopter crash in the Gulf of Mexico. The District Court found each of the three passengers was covered by a different law. Higginbotham, as a platform worker, was covered by the Death on the High Seas Act and general maritime law; Shinn, employed on a drilling barge, was found to be a seaman covered under DOHSA, the Jones Act and general maritime law; and Nation, as a non-seaman employee, was covered by the Longshoreman's and Harbor Workers' Compensation Act. 545 F.2d at 424-

425. The Fifth Circuit Court did not question the application of different laws to each of the three individuals killed in the same accident offshore. It did, however, find Higginbotham was also entitled to seaman status, not because of any requirements for the same laws to apply to everyone involved in the same accident, but only because he worked predominantly on board vessels.

The above examples of different laws being applicable among personnel working offshore underscore the fundamental principle that each case before the court has to be considered on its facts dealing not with generalities but the claim presented. The Petitioners' assertion the Court of Appeals' decision resulted in "unequal treatment" attempts to conveniently create for them in this case a new choice of law factor contrary to all judicial precedents which have considered the law applicable to maritime torts.

IV.

Respondents Object to Petitioners' Motion to Docket Petition Without Prepayment of Costs.

Petitioners have petitioned this Court to docket the Petition without the prepayment of costs under the authority of Title 28 United States Code section 1916. Respondents have disputed Petitioners' alleged status as seamen and it remains as an issue to be tried in this litigation. (CT 144, 680). Accordingly, Respondents respectfully object to Petitioners' contention they qualify as seamen under Title 28 United States Code section 1916.

Conclusion.

The decision of the Court of Appeals presents no "special or important" reason for an exercise of this Court's jurisdiction. Moreover, the decision of the Court of Appeals was

manifestly correct in affirming the decision of the District Court and in denying Petitioners' application for a rehearing.

We respectfully submit that the Petition for a Writ of Certiorari should be denied.

SHELDON A. GEBB,
BILL E. SCHROEDER,
Attorneys for Respondents
Amoco Trinidad Oil Company and
Santa Fe Drilling Company.

Of Counsel:
MICHAEL L. SHANNON,
MCCUTCHEN, BLACK, VERLEGER & SHEA,
WINSTON EDWARD RICE,
PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS.